Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFT MNDCT OLC PSF RR

Introduction

The tenant seeks the following relief under the *Residential Tenancy Act* (the "Act"):

1. compensation for loss of quiet enjoyment, pursuant to section 67 of the Act;
2. an order for a reduction in rent, pursuant to section 65 of the Act;
3. an order for the landlords to provide services required by the tenancy agreement, pursuant to section 62 of the Act;
4. an order for the landlords to comply with the Act, the regulations, or the tenancy agreement, pursuant to section 62 of the Act; and,
5. recovery of the filing fee pursuant to section 72 of the Act.

The tenant applied for dispute resolution on October 16, 2019 and a dispute resolution hearing was held on December 23, 2019. The tenant, his spouse, the landlords, and the landlord's one-time agent, attended the hearing; they were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues regarding the service of documents or evidence was raised by the parties.

I note that the tenant's application incorrectly named the landlords' agent as landlord and respondent; based on the evidence of the parties I have corrected this to reflect the legal names of the landlords (the respondents).

While I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred, I have only considered evidence relevant to the issues of this application. It should be noted at the outset that the tenant submitted almost 200 photographs, audio, and video files, most of which were not labelled in a clear or organized manner. For this reason, which is a requirement under Rule 3.7 of the *Rules of Procedure,* not all evidence submitted by the tenant will be considered or referred to in this Decision.

Issues

The issues in this dispute which must be decided are whether the tenant is entitled to

1. compensation for loss of quiet enjoyment, pursuant to section 67 of the Act,
2. an order for a reduction in rent, pursuant to section 65 of the Act,
3. an order for the landlords to provide services required by the tenancy agreement, pursuant to section 62 of the Act,
4. an order for the landlords to comply with the Act, the regulations, or the tenancy agreement, pursuant to section 62 of the Act, and
5. recovery of the filing fee pursuant to section 72 of the Act.

Background and Evidence

The tenant seeks compensation for loss of value of his rent for a period January 2018 to September 2019, inclusive, for $20,737.50. (As indicated in a Monetary Order Worksheet, this is calculated as 50% of the rent.) He also seeks an ongoing rent reduction of this amount until the landlords fix the issues.

By way of background, the tenancy commenced June 1, 2017 and it was originally a one-year fixed term tenancy, ending May 31, 2018. The tenancy was “renewed” for a further four years in April 2018, at the same monthly rent. A copy of the tenancy agreement was submitted into evidence.

The various issues that led to this dispute were described in detail by the tenant and his spouse. For purposes of clarity and exactitude, I shall reproduce below the tenant’s written submission (which mirrors his testimony):

> From the day we moved into our suite until the day the new tenants moved in upstairs, we never had a single problem. We had a great relationship with the people who lived upstairs, they were extremely respectful and our kids played very well together. We lived in total harmony with these people for about 6 months before they moved out of the province for work.
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> When the new tenants moved in on Dec 23rd 2017 everything changed. They were extremely disrespectful and immediately began crossing every conceivable boundary. After about 2 weeks I reached out to the property manager for advise. She went to speak to them and they calmly explained away the issues, and told

her that we should have spoken with them and that it wasn't her job to deal with it.

We then spent the next few months trying to deal with them directly. Any time we contacted them we would be dismissed or mocked, the issue wouldn't be resolved at all and some type of retaliation would follow. We were being constantly disrupted and our boundaries were never respected.

Finally [tenant's spouse] reached out to the property manager again and she agreed that the issues were unacceptable. We followed her lead on how to deal with it which resulted in an email complaint being sent from [tenant's spouse] to all parties including the landlord. The landlord replied with common sense guidelines that should be followed.

Then later that week the landlord went and spoke to the people upstairs in person. They again calmly explained everything away and pushed the narrative that they should be "the first point of contact" and that these were not serious issues. This was the tipping point which caused the ongoing problems to turn from selfish, disrespectful and inconsiderate to deliberate, harassing and unrelenting.

After mismanaging the situation and making things much worse the property manager decided that she needed to "back away" and that we needed to deal with it "in house". For the next year and a half we dealt with problem after problem. When one problem would finally come to an end, another one would begin. The people upstairs would move from one form of harassment to another and the property manager and landlord would fail to correct the situation. Their lack of action essencially [*sic*] enabled and emboldened their behaviour. There was never any consequence whatsoever for the multitude of disruptions.

The people upstairs became increasingly more volatile over time and their brazen behaviour escalated. In response to any complaint the property manager would tell us that she was a "volunteer" and that we should only contact her regarding damage and repairs. The landlord would tell us not to contact her and direct our problems to the property manager.

I made dozens of calls to the residential tenancy branch, and a handful to the police. Every time I was told the same thing, we had a business contract with the landlord and her agent and that it is absolutely not our responsibility to deal with

disruptive tenants. We were counselled to submit a dispute resolution several times but this felt like such an extreme step to take, and the prospect of doing it felt very uncomfortable. We have never dealt with anything like this before.

We tried to be patient and focused on trying to get the landlord to take these issues seriously and address our ongoing concerns. The landlords were increasingly dismissive and never once sat down with us in person. Finally, the people upstairs began running laundry above our bedroom late at night. The vibrations from the machines generates constant noise in excess of the noise bylaw and well after the acceptable hours. This affected our ability to sleep on a regular near nightly basis. The police have told us that the jurisdiction falls under tenancy and that they could not act. They have been asked by the property manager to respect the bylaw but have refused. Aparently [*sic*] this is necessary due to their "lifestyle" and yet it only just recently started happening a few months ago.

After trying repeatedly to address these problems I finally served the property manager with a formal complaint. This prompted her resignation but the only meaningful response from the landlord was that if we are unhappy we could move. This was a totally unacceptable response after a year and a half of dealing with these ongoing issues. We continued to try and give them a chance to deal with the problems but in the end they chose to dismiss us.

This has taken an extremely heavy toll on my family. Our children have been the ones who have been the most affected by this. The time we have had to spend dealing with these problems, writting texts and emails, gathering evidence, preparing this dispute, etc should have time spent with our children. Also my son is old enough to be aware that he has lost his back yard, and yet he has to walk past other kids playing and enjoying themselves in it every day. Having to to deal with these constant issues has been extremely stressful for my family and being completely ignored along the way has been beyond frustrating. Especially when we would directly relay information to them from the RTB and RCMP and still be dismissed. When I first visited the police station for advise. The officer I spoke with told me that having to deal with this in the one place we are supposed to feel safe was like "death by a million cuts".
After dealing with this for almost 2 full years we regret that we have been left with no choice but to file this dispute.

The tenant explained that the combined loss of gardening services and noise issues (amongst the other issues) amount to a 50% loss in the value of his rent during the relevant time period.

A review of the written tenancy agreement (the first agreement) indicates that the "Lessors agree to cover the cost of weeding and lawn cutting approximately every 2 weeks." This term remained in the renewed tenancy agreement. According to the tenant, the quality of the weeding and lawn cutting declined dramatically after the new upstairs tenants moved in. It turns out that the new tenants (variously referred to as upper, upstairs, and new tenants herein) took over the weeding and lawn cutting provisions in exchange for a reduction in their rent.

The landlords' agent briefly testified, but only in relation to a laundry machine complaint; nothing further was provided by the agent. However, the landlord ("S.S.") testified that the fact of the matter is, there is going to be noise transference between the tenants (who reside in the basement suite) and the new (or upstairs) tenants. She explained that they did their best to deal with the tenant's numerous complaints and that she thought these had been resolved. "We did our best to respond to them," she remarked. In many respects, the landlord added, the issues go beyond their obligations as landlords and instead involve a deteriorated interpersonal relationship between the tenant and this family, and the upstairs tenants.

The landlord testified that she spoke with the upstairs tenants on many times about the sound issues, to which the upstairs tenants said that they would do their best to address the issues and keep quiet. She looked into soundproofing, but to do so would cost approximately $6,000.00, and this was just for the laundry room. "We've done our best," in respect of trying to resolve the noise issues.

Regarding the gardening, the landlord confirmed that "we did let the upstairs tenants do the gardening for a break in the rent." She said that whenever she and the other landlord visited the property "it looks great, front and back." Part of the lawn does not grow particularly well, however, because part of the lawn used to be a swamp. In short, she felt that the gardening has been "maintained just fine."

The landlord added that, while there were noise issues between the parties fairly early on, the tenant chose to renew the tenancy for an additional four years. She argued that the problems as described could clearly not have been that bad if the tenant chose to stay for another four years. And, that the tenant could have left if the issues were that bad.

In their rebuttal, the tenant and his spouse explained that it is not that the lawn used to be a swamp, but rather, that the grass is simply not getting mowed. The front yard looks good but the back yard, not so much. The side of the house, through which they traverse to access their rental unit, is completely overgrown. They contacted the property manager several times to address the problem, to no avail. The grass is as high as 8 inches, remarked the tenant.

Regarding the tenancy renewal, the tenant's spouse testified that "things hadn't gotten as bad as they've gotten to know," so it was not an issue to renew the tenancy. They added that "all we want is people to respect our boundaries and leave us alone."

Speaking to the issues in the backyard (including a trampoline that the other tenants put there, without anyone's permission), the tenant stated that "my child has been hit in the face with a shovel" by the other tenants' children. And, the other tenants' child "runs around with knives and scissors," posing a danger to the tenant's own children.

In rebuttal, the landlord ("S.") testified that the tenant and his family have been using the backyard, and that while it is "very unfortunate" and that they have "tried to be impartial," the situation does not appear to be improving. She further said that they have given both sets of tenants an opportunity to get out of their tenancy agreements without penalty as an option to solving the ongoing dispute.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. First, I shall review the law that applies. Then, I shall review and apply the facts of this case to the law.

Compensation

The tenant seeks compensation. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the

regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria (a four-part test, as it were) to be awarded compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?

2. if yes, did the loss or damage result from the non-compliance?

3. has the applicant proven the amount or value of their damage or loss?

4. has the applicant done whatever is reasonable to minimize the damage or loss?

Reduction in Rent

Section 65(1)(f) of the Act states that “that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.”

Order for Services or Facilities Provided under Tenancy Agreement and Order for Landlords to Comply with Act, Regulations or Tenancy Agreement

These two orders sought by the tenant fall under section 62(3) of the Act, which states that an arbitrator

> may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Recovery of Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee.

Claim for Weeding and Lawn Cutting

A simple fact is this: the tenancy agreement states that the cost of the weeding and lawn cutting (what I shall call “grounds maintenance”) is to be paid for by the landlords. What this implies, I find, is that the responsibility under the tenancy for grounds maintenance falls entirely on the landlords.

Whether the cost is paid in cash by the landlords to a lawn maintenance company or paid in exchange for reduced rent with the upper tenants makes no difference. Throughout the tenancy the landlords have borne the cost of the grounds maintenance.

That the *quality* or *frequency* of that grounds maintenance might leave something to be desired – as evidenced by the 8-inch grass referred to by the tenant, not to mention the overgrowth on the side path – is another issue altogether. The tenant did not advance any evidence that the lawn itself or the presence of weeds makes the shared used of the grounds actually unusable. Nor do I find evidence that the tenant has suffered a loss of use of common areas.

(The issue of the other tenants’ children running with knives and scissors is disconcerting to say the least, but the tenant did not file a claim alleging safety issues for which the landlords may be responsible.)

Applying the first step in the above-noted four-part “test”, I find that the landlords have not breached the tenancy agreement. The cost of the weeding and lawn cutting has been covered by the landlords since day 1; the cost is a reduced rental income from the other tenants who are supposed to be cutting the lawn and weeding. Indeed, this term in the tenancy agreement (which, unfortunately, appears to be based on an American tenancy agreement template) is superfluous and serves no actual purpose.

For this reason, I do not find that the tenant has proven, on a balance of probabilities, that he is entitled to compensation and a reduction in past or future rent for this aspect of his application.

Claim for Loss of Quiet Enjoyment

The second major claim in this dispute relates to the tenant’s and his family’s loss of quiet enjoyment. As an aside, there is no medical documentary evidence related to the claim of “emotional strain” pertaining to these issues. As such, I will not consider any compensation related to this aspect of the tenant’s claim.

Section 28 of the Act states that

> A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (a) reasonable privacy;
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> (b) freedom from unreasonable disturbance;
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> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

In this case, the tenant and his spouse testified as to significant, ongoing disturbances from the upstairs tenants. The disturbances have continued since December 2017, and have consisted of, among other issues, “Excessive stomping, infringing on our garage space, restrictive parking behaviour and a lack of parental supervision began immediately.” The upper tenants ran the washing machine or dryer at late hours in the night, when the tenant and spouse (and baby) were trying to sleep.

In early 2018, the tenant and his spouse “tried to follow everyones suggestion and go to the people upstairs directly when we had a problem, but were always dismissed. Nothing ever improved or was resolved.” In June 2018 the landlord sent an email to all the tenants asking that they start respecting matters such as parental supervision, parking, and garage storage issues.

An air compressor issue arose in September 2018 (in short, the upstairs tenant used an air compressor in a vent which resulted in dust and dirt being discharged all over the tenant’s wife and baby). In November 2018, the upstairs tenants started manipulating the heat in the house to the extent that they (described rather melodramatically by the tenant) “literally tortured my family with the thermostat knowing that we have small children.”

Other issues included a noisy New Year’s Eve party that occurred on January 1, 2019, in which the tenant and his family “experienced the most hellish stomping that we have ever heard.” Into 2019 issues such as dog feces in the yard came up, and the proper

closure of garbage bins. In March 2019 the tenant contacted the landlord and asked that a fence be built to “prevent any further harassment as well as a gate at the side of the house to keep our children safe from the busy street out front.” They offered to pay for the cost of the fence. The landlords responded that they did not want a fence dividing the backyard.

At the outset, I note that the landlords did not directly dispute that the upstairs tenants did not unreasonably disturb the tenant. Rather, the landlord submitted that they have not experienced noise issues previous to this tenant, and therefore the problems are not as described. Moreover, the landlord argued that much of the issues are of an interpersonal nature, not solvable by a landlord. She reiterated a few times that she has done all that she can do. I agree, but only to a point.

The landlords, and their one-time property manager, appeared to take some steps in resolving the complaints. They spoke or had email conversations with the upstairs tenants. However, they never took the additional step of actually warning the upstairs tenants that any additional noise might result in an end to the tenancy. I saw no evidence of any communication between the landlords and the upstairs tenants regarding the noise. The landlords took no additional steps even after the tenant contacted the police in response to the various issues.

I find that the landlords, through their lackadaisical view of the interpersonal issues, permitted the tenant’s right to quiet enjoyment to be breached at several instances throughout the tenancy. For this reason, I find that the landlords breached section 28(b) of the Act through their failure to take reasonable steps in resolving ongoing issues. Further, I find that but for a breach in the tenant’s quiet enjoyment, the tenant would not have suffered a devaluation in the value of his rent.

The third question that must be answered is, has the tenant proven the amount or value of his damage or loss?

The tenant complains of unreasonable interference and seeks compensation for a period of 21 months, but there is no evidence that there was constant, daily, interference throughout a period of almost two years.

Certainly, there have been several instances of interference, including regular noise and stomping, there is no documented log or record of each and every incident that gave rise to unreasonable interreference. From the testimony, and the written submissions, the unreasonable interference – and I do find that the upstairs tenants caused

unreasonable interreference on many occasions – it was and is not an ongoing, constant problem that establishes a basis for 21 months of compensation in the amount sought.

In this case, I do not find that the tenant has provided a logical or rational explanation for how he arrived at 50% (or some portion thereof) in valuing his loss. While quiet enjoyment is certainly an important component of what one pays for to rent, it is not the only portion. The calculated lost value of the rent must take into account the frequency, duration, and intensity of the interference. If, for example, a tenant was disturbed almost constantly, then the value would be higher than, say, if the interference was sporadic. In this dispute, such disturbances as late-night New Year's Eve parties and air compressor discharges are incredibly disturbing, they are also one-time events.

For this reason, I do not find that the tenant has proven the amount or value of his loss as claimed, in the amount of $20,737.50 (or a portion thereof, considering that his claim for weeding and lawn cutting has been dismissed).

That having been said, there was a breach of section 28 of the Act on several occasions, both small and significant. For these breaches I award nominal damages, which are a minimal award. Nominal damages may be awarded where there has been no significant loss or (as in this case) no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case I award the tenant nominal damages in the amount of $2,100.00, which represents $100.00 for each month that the landlords failed to actually resolve the issues in a reasonable manner.

The final part of the above-noted compensation test is, has the tenant done whatever is reasonable to minimize the damage or loss? I find that he has.

He and his spouse wrote multiple emails to the landlords or their property manager. They tried speaking with the upstairs tenants. They called the RCMP. They called the RTB. But all of this was in vain. They filed for dispute resolution only after all avenues of resolution were exhausted. To expect the tenant and his family to find another place to live (or not to renew the tenancy), as suggested by the landlord, is, quite frankly, preposterous. A tenant can only do so much, before a landlord must step up and take a firmer stand on the issues.

While some level of noise between neighboring tenants is to be expected in this type of property, the type of noise and other behavior as have been the case here is not to be expected. Nor should a tenant or a landlord tolerate such behavior. It is only an inconsiderate tenant who vacuums above their downstairs neighbor at 1:30 AM. It is an inconsiderate tenant who discharges an air compressor down an air vent without first checking. And, it is a less-than-diligent landlord who fails to take reasonable, extra steps in curtailing this type of behavior. At some point, issues between tenants becomes a landlord's responsibility. I certainly appreciate that the landlord did not want to get involved in what is clearly a toxic relationship between the parties, but at some point, the landlord needs to step in and enforce the Act. And, make it clear to the offending party that there are consequences for ongoing noncompliance.

In summary, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving his claim in respect of a loss of quiet enjoyment. As noted, I award him nominal damages in the amount of $2,100.00.

Reduction in Rent and Order for Landlords to Comply with Act, Regulations or Tenancy Agreement

Given my above finding that only nominal damages are to be awarded, I need not make a determination that past or future rent must be reduced, as per subsection 65(1)(f) of the Act.

That having been said, should the landlords fail to take additional, reasonable steps to ensure that the upstairs tenants do not continue to breach section 28 of the Act, the tenant is at liberty to file a future application for dispute resolution seeking a reduction in rent for any such breach. This aspect of the tenant's application is thus dismissed with leave to reapply.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving his claim for an order that the landlords comply with the Act.

Specifically, pursuant to section 62 of the Act, I order that the landlords comply with section 28 of the Act. Failure to take reasonable steps in ensuring there are no more breaches of the tenant's rights under this section may be a basis on which the tenant may apply for future relief under the Act.

Order for Services or Facilities Provided under Tenancy Agreement

Having found that the tenancy includes the services of lawn cutting and weeding (and which are covered by the landlords), I decline to make an order requiring the provision of such services. This aspect of the application is dismissed without leave to reapply.

That having been said, the landlords are expected to ensure that the side pathway is free and clear for egress, and they are expected to ensure that the lawn is maintained in such a manner as to make it useable by the tenant and his family.

Filing Fee

As the tenant was successful in respect of his claim for loss of quiet enjoyment I grant his claim for reimbursement of the filing fee in the amount of $100.00. This amount shall be added to the above-awarded amount of $2,100.00 for a total of $2,200.00

Conclusion

I hereby grant, pursuant to section 67 of the Act, the tenant a monetary order in the amount of $2,200.00, which must be served on the landlords. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

I hereby order that the landlords comply with section 28 of the Act.

All other claims are dismissed, either with or without leave, where indicated above.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: December 24, 2019

Residential Tenancy Branch